

AMENDED IN ASSEMBLY JUNE 24, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 164

Introduced by Assembly Member Knox

January 27, 1997

An act to amend Sections ~~404.6~~ 404, 404.6, and 405 of, and to add Section 4019.1 to, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Knox. Incitement to riot: correctional facilities.

Existing law provides that every person who with the intent to cause a riot does an act or engages in conduct which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

This bill would provide that any person who engages in this conduct is guilty of incitement to riot which is generally punishable as specified above. However, any person who incites to riot in any state prison, county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, or any juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp shall be punished by imprisonment in the state

prison for ~~2, 3, or 6~~ 16 months, or 2 or 3 years, or in a county jail for not more than one year. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

Existing law provides that every person who participates in a riot is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

This bill would provide, in addition, that any person who participates in a riot in any state prison, county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, or any juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp shall be punished by imprisonment in the state prison for ~~2, 3, or 6~~ 16 months, or 2 or 3 years, or in a county jail for not more than one year. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

This bill would also provide that any person convicted of inciting to riot or participating in a riot in a state prison or county jail, or any ~~person inmate of a local detention facility~~ convicted of the assault or battery of a ~~peace officer or county jail employee~~ *noninmate* if the offense was committed while at, confined in, being conveyed to or from, or under the custody of officials, officers, or employees of a ~~county jail local detention facility~~, shall forfeit any work performance or good behavior deductions earned against his or her term of imprisonment.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 404 of the Penal Code is*
2 *amended to read:*

1 404. (a) Any use of force or violence, disturbing the
2 public peace, or any threat to use force or violence, if
3 accompanied by immediate power of execution, by two
4 or more persons acting together, and without authority of
5 law, is a riot.

6 (b) As used in this section, disturbing the public peace
7 may occur in any place of confinement. Place of
8 confinement means any state prison, county jail,
9 industrial farm, or road camp, *or any Department of the*
10 *Youth Authority institution or camp*, or any city jail,
11 industrial farm, or road camp, or any juvenile hall,
12 juvenile camp, juvenile ranch, or juvenile forestry camp.

13 SEC. 2. Section 404.6 of the Penal Code is amended to
14 read:

15 404.6. (a) Every person who with the intent to cause
16 a riot does an act or engages in conduct which urges a riot,
17 or urges others to commit acts of force or violence, or the
18 burning or destroying of property, and at a time and place
19 and under circumstances which produce a clear and
20 present and immediate danger of acts of force or violence
21 or the burning or destroying of property, is guilty of
22 incitement to riot.

23 (b) Incitement to riot is punishable by a fine not
24 exceeding one thousand dollars (\$1,000), or by
25 imprisonment in a county jail not exceeding one year, or
26 by both that fine and imprisonment.

27 (c) Every person who incites any riot in a place of
28 confinement, as defined in subdivision (b) of Section 404,
29 shall be punished by imprisonment in the state prison for
30 a full term of ~~two, three, or six~~ 16 months, or two or three
31 years, which term shall be consecutive to any other term
32 of imprisonment, shall commence from the time the
33 person would otherwise have been released from
34 imprisonment, and shall not be subject to reduction
35 pursuant to subdivision (a) of Section 1170.1, or shall be
36 punished by imprisonment in a county jail for a
37 consecutive term not to exceed one year, which term
38 shall commence from the time the prisoner would
39 otherwise have been discharged from the jail. Any order
40 for a consecutive term of imprisonment in a county jail

1 under this subdivision may be served in the state prison,
2 commencing at the expiration of any other state prison
3 sentence. For any time credit accumulated pursuant to
4 Section 2931, 2933, or 4019, not more than 360 days of
5 credit may be denied or lost for any conviction under this
6 section.

7 (d) The existence of any fact ~~which—that~~ *that would*
8 bring a person under subdivision (c) shall be alleged in
9 the complaint, information, or indictment and either
10 admitted by the defendant in open court, or found to be
11 true by the jury trying the issue of guilt, by the court
12 where guilt is established by a plea of guilty or nolo
13 contendre, or by trial by the court sitting without a jury.

14 ~~SEC. 2.~~

15 *SEC. 3.* Section 405 of the Penal Code is amended to
16 read:

17 405. (a) Every person who participates in any riot
18 shall be punished by a fine not exceeding one thousand
19 dollars (\$1,000), or by imprisonment in a county jail not
20 exceeding one year, or by both that fine and
21 imprisonment.

22 (b) Every person who participates in any riot in a
23 place of confinement, as defined in subdivision (b) of
24 Section 404, shall be punished by imprisonment in the
25 state prison for a full term of ~~two, three, or six~~ *16 months,*
26 *or two or three* years, which term shall be consecutive to
27 any other term of imprisonment, shall commence from
28 the time the person would otherwise have been released
29 from imprisonment, and shall not be subject to reduction
30 pursuant to subdivision (a) of Section 1170.1, or shall be
31 punished by imprisonment in a county jail for a
32 consecutive term not to exceed one year, which term
33 shall commence from the time the prisoner would
34 otherwise have been discharged from the jail. Any order
35 for a consecutive term of imprisonment in a county jail
36 under this subdivision may be served in the state prison,
37 commencing at the expiration of any other state prison
38 sentence. For any time credit accumulated pursuant to
39 Section 2931, 2933, or 4019, not more than 360 days of

1 credit may be denied or lost for any conviction under this
2 section.

3 (c) The existence of any fact that would bring a person
4 under subdivision (b) shall be alleged in the complaint,
5 information, or indictment, and either admitted by the
6 defendant in open court, or found to be true by the jury
7 trying the issue of guilt, by the court where guilt is
8 established by plea of guilty or nolo contendere, or by trial
9 by the court sitting without a jury.

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 4019.1 is added to the Penal Code, to
12 read:

13 4019.1. (a) Any person specified in subdivision (b)
14 shall forfeit any work performance or good behavior
15 deductions earned pursuant to Section 4019.

16 (b) This section applies to the following persons:

17 (1) Any person convicted of a violation of subdivision
18 (c) of Section 404.6 or subdivision (b) of Section 405.

19 ~~(2) Any person convicted of the assault or battery of a~~
20 ~~peace officer, as defined in Section 830, or any person~~
21 ~~employed in a county jail by a sheriff's department, if the~~
22 ~~offense was committed while at, confined in, being~~
23 ~~conveyed to or from, or under the custody of officials,~~
24 ~~officers, or employees of a county jail.~~

25 *(2) Any inmate of a local detention facility convicted*
26 *of the assault or battery of a noninmate, if the offense was*
27 *committed while at, confined in, being conveyed to or*
28 *from, or under the custody of officials, officers, or*
29 *employees of a local detention facility.*

30 ~~SEC. 4.~~

31 *SEC. 5.* No reimbursement is required by this act
32 pursuant to Section 6 of Article XIII B of the California
33 Constitution because the only costs that may be incurred
34 by a local agency or school district will be incurred
35 because this act creates a new crime or infraction,
36 eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition
39 of a crime within the meaning of Section 6 of Article
40 XIII B of the California Constitution.

1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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